

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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WILLIAM MICHAEL BOES,

Case No. 3:20-cv-00125-MMD-CLB

Plaintiff,

ORDER

v.

NDOC, *et al.*,

Defendants.

This action is a *pro se* civil rights action filed pursuant to 42 U.S.C. § 1983 by Plaintiff William Michael Boes, in the custody of the Nevada Department of Corrections (“NDOC”). On February 22, 2021, the Court issued an order dismissing the complaint with leave to amend. (ECF No. 3 at 13.) The time period for filing an amended complaint has now expired, and Boes has not filed an amended complaint or otherwise responded to the Court’s order.<sup>1</sup> District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of L.A.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128,

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<sup>1</sup>On April 24, 2021, Boes sent a letter to the Clerk’s Office requesting a status check. (ECF No. 5.) However, Boes has not responded to the Court’s order dismissing the complaint with leave to amend.

1 130 (9th Cir. 1987) (dismissal for failure to comply with court order); Henderson v.  
2 Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure  
3 to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey  
5 a court order, or failure to comply with local rules, the Court must consider several factors:  
6 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
9 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130;  
10 Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

11 In the instant case, the Court finds that the first two factors, the public's interest in  
12 expeditiously resolving this litigation and the Court's interest in managing the docket,  
13 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs  
14 in favor of dismissal, since a presumption of injury arises from the occurrence of  
15 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See  
16 Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy  
17 favoring disposition of cases on their merits—is greatly outweighed by the factors in favor  
18 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
19 the court's order will result in dismissal satisfies the "consideration of alternatives"  
20 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779 F.2d  
21 at 1424. The Court's order requiring Boes to file an amended complaint within 30 days  
22 expressly warned Boes that, if he failed to timely file an amended complaint, this action  
23 would be dismissed with prejudice for failure to state a claim. (ECF No. 3 at 13.) Thus,  
24 Boes had adequate warning that dismissal would result from his noncompliance with the  
25 Court's order to file an amended complaint within 30 days.

26 For the foregoing reasons, it is ordered that Boes' application to proceed in forma  
27 pauperis (ECF No. 1) without having to prepay the full filing fee is granted. Boes shall not  
28 be required to pay an initial installment fee. Nevertheless, the full filing fee shall still be

1 due, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act  
2 ("PLRA"). Boes is permitted to maintain this action to conclusion without the necessity of  
3 prepayment of fees or costs or the giving of security therefor.

4 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the PLRA,  
5 the NDOC will forward payments from the account of William Boes, # 1221517, to the  
6 Clerk of the United States District Court, District of Nevada, 20% of the preceding month's  
7 deposits (in months that the account exceeds \$10.00) until the full \$350 filing fee has  
8 been paid for this action. The Clerk of Court will send a copy of this Order to the Finance  
9 Division of the Clerk's Office. The Clerk of Court will send a copy of this Order to the  
10 attention of Chief of Inmate Services for the Nevada Department of Corrections, P.O. Box  
11 7011, Carson City, NV 89702.

12 It is further ordered that, regardless of the success of Boes' action, the full filing  
13 fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by the PLRA.

14 It is further ordered that this action is dismissed with prejudice based on Boes'  
15 failure to file an amended complaint in compliance with this Court's February 22, 2021  
16 order and for failure to state a claim.

17 It is further ordered that the Clerk of Court shall enter judgment accordingly and  
18 close this case.

19 DATED THIS 2nd Day of April 2021.

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22 MIRANDA M. DU  
23 CHIEF UNITED STATES DISTRICT JUDGE  
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